(3)

Rs 100

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO.2932/2004

Petitioner : Patiram Sahu S/o Lalaram Sahu, Aged about 52 years, R/o Jarhagaon Lormi, Dist : Bilaspur-(C.G.)

Versus

Respondents

1. State of Chhattisgarh Through its Secretary, Water Resource Department, D.K.S. Bhawan, Raipur, Dist : Raipur-(C.G.)
2. Engineer in Chief Water Resource Department, Raipur-(C.G.)
3. The Chief Engineer (Minor), Water Resource Department, Hasdeo Kachhar (Karangh), Bilaspur-(C.G.)
4. The Executive Engineer, Maniyari Division, Mungeli, Dist : Bilaspur-(C.G.)
5. The Sub Divisional Officer, Sub Division Lormi (Maniyari Dam), Dist : Bilaspur-(C.G.)

P. R. No. 29261 dt 4
Presented by Shri Yatindra Nagarajan Mishra
dated 26.8.04

RECEIVED COPY
26/8/04
Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA

Particulars of the Petitioner :

AFR (46)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2932 of 2004

Petitioner Patiram Sahu

Versus

Respondents State of Chhattisgarh and others

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri P. R. Patankar, Advocate for the petitioner.

Smt. Anju Ahuja, Deputy Government Advocate for the State/respondents.

ORAL ORDER

(3rd May, 2006)

1. The petitioner was appointed on daily wages basis as Coolee in the Water Resources Department, allegedly in the year 1971. According to the petitioner, he has been continuously working for the last 25 years. Admittedly, the petitioner was not appointed after proper competition among qualified persons pursuant to any open advertisement. The petitioner has filed this petition seeking regularization of his appointment on daily wages basis on the ground that the juniors have been regularized and the petitioner is not being regularized despite there being vacancy available.

2. The respondents have categorically denied the allegation of regularization of juniors in their affidavit in the following term:-

> "It is also denied that the petitioner was working as daily wage worker in the Water Resources Department since the year 1971. It is submitted that the petitioner, in fact, has been working with the Water Resources Department as daily wage worker since 1978 only. It is also categorically denied that the persons junior to the petitioner have been regularized ahead of the petitioner."

3. Be that as it may, after having heard learned counsel for the parties and perusing the records appended to the return it is clearly established that the petitioner was not appointed as per the constitutional scheme on open competition with similarly situated persons.

4. The Constitution Bench of the Supreme Court in the case of **Secretary, State of Karnataka & Others Vs. Umadevi & Others** (2006 (4) SCALE) 197 held as under:

> "Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his terms of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of

(48)

their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

5. In the facts and circumstances of the case, where it is admitted case of the petitioner that he was appointed on daily wages basis not on the basis of advertisement or open competition, the petitioner has not acquired any right on account of the fact that he has worked for a longer period. In view of the judgment of the Hon'ble Constitution Bench of the Supreme Court in the case of **Secretary, State of Karnataka & others** (supra), this petition deserves to be and is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur